

A. THE IMMIGRATION & NATIONALITY ACT

Section 349(a)(5) of the Immigration and Nationality Act (INA) ([8 U.S.C. 1481\(a\)\(5\)](#)) is the section of law that governs the ability of a United States citizen to renounce his or her U.S. citizenship. That section of law provides for the loss of nationality by voluntarily performing the following act with the intent to relinquish his or her U.S. nationality:

"(5) making a formal renunciation of nationality before a diplomatic or consular officer of the United States ***in a foreign state*** , in such form as may be prescribed by the Secretary of State" (emphasis added).

B. ELEMENTS OF RENUNCIATION

A person wishing to renounce his or her U.S. citizenship must voluntarily and with intent to relinquish U.S. citizenship:

1. appear in person before a U.S. consular or diplomatic officer,
2. in a foreign country (normally at a U.S. Embassy or Consulate); and
3. sign an oath of renunciation

Renunciations that do not meet the conditions described above have no legal effect. Because of the provisions of section 349(a)(5), Americans cannot effectively renounce their citizenship by mail, through an agent, or while in the United States. In fact, U.S. courts have held certain attempts to renounce U.S. citizenship to be ineffective on a variety of grounds, as discussed below.

C. REQUIREMENT - RENOUNCE ALL RIGHTS AND PRIVILEGES

In the case of *Colon v. U.S. Department of State* , 2 F.Supp.2d 43 (1998), plaintiff was a United States citizen and resident of Puerto Rico, who executed an oath of renunciation before a consular officer at the U.S. Embassy in Santo Domingo. The U.S. District Court for the District of Columbia rejected Colon's petition for a writ of mandamus directing the Secretary of State to approve a Certificate of Loss of Nationality in the case because the plaintiff wanted to retain one of the primary

benefits of U.S. citizenship while claiming he was not a U.S. citizen. The Court described the plaintiff as a person, "claiming to renounce all rights and privileges of United States citizenship, [while] Plaintiff wants to continue to exercise one of the fundamental rights of citizenship, namely to travel freely throughout the world and when he wants to, return and reside in the United States." See also *Jose Fufi Santori v. United States of America*, 1994 U.S. App. LEXIS 16299 (1994) for a similar case.

A person who wants to renounce U.S. citizenship cannot decide to retain some of the privileges of citizenship, as this would be logically inconsistent with the concept of renunciation. Thus, such a person can be said to lack a full understanding of renouncing citizenship and/or lack the necessary intent to renounce citizenship, and the Department of State will not approve a loss of citizenship in such instances.

D. DUAL NATIONALITY / STATELESSNESS

Persons intending to renounce U.S. citizenship should be aware that, unless they already possess a foreign nationality, they may be rendered stateless and, thus, lack the protection of any government. They may also have difficulty traveling as they may not be entitled to a passport from any country. Even if they were not stateless, they would still be required to obtain a visa to travel to the United States, or show that they are eligible for admission pursuant to the terms of the Visa Waiver Pilot Program (VWPP). If found ineligible for a visa or the VWPP to come to the U.S., a renunciant, under certain circumstances, could be barred from entering the United States. Nonetheless, renunciation of U.S. citizenship may not prevent a foreign country from deporting that individual back to the United States in some non-citizen status.

E. TAX & MILITARY OBLIGATIONS /NO ESCAPE FROM PROSECUTION

Also, persons who wish to renounce U.S. citizenship should also be aware that the fact that a person has renounced U.S. citizenship may have no effect whatsoever on his or her U.S. tax or military service obligations (contact the Internal Revenue Service or U.S. Selective Service for more information). In addition, the act of renouncing U.S. citizenship will not allow persons to avoid possible prosecution for crimes which they may have committed in the United States, or escape the

repayment of financial obligations previously incurred in the United States or incurred as United States citizens abroad.

F. RENUNCIATION FOR MINOR CHILDREN

Parents cannot renounce U.S. citizenship on behalf of their minor children. Before an oath of renunciation will be administered under Section 349(a)(5) of the INA, a person under the age of eighteen must convince a U.S. diplomatic or consular officer that he/she fully understands the nature and consequences of the oath of renunciation, is not subject to duress or undue influence, and is voluntarily seeking to renounce his/her U.S. citizenship.

G. IRREVOCABILITY OF RENUNCIATION

Finally, those contemplating a renunciation of U.S. citizenship should understand that the act is irrevocable, except as provided in section 351 of the INA ([8 U.S.C. 1483](#)), and cannot be canceled or set aside absent successful administrative or judicial appeal. (Section 351(b) of the INA provides that an applicant who renounced his or her U.S. citizenship before the age of eighteen can have that citizenship reinstated if he or she makes that desire known to the Department of State within six months after attaining the age of eighteen. See also Title 22, Code of Federal Regulations, section 50.20).

Renunciation is the most unequivocal way in which a person can manifest an intention to relinquish U.S. citizenship. Please consider the effects of renouncing U.S. citizenship, described above, before taking this serious and irrevocable action. If you have any further questions regarding this matter, please contact:

Express Mail:

Director
Office of Policy Review and Inter-Agency Liaison (CA/OCS/PRI)
Overseas Citizens Services
Bureau of Consular Affairs
U.S. Department of State
4th Floor
2100 Pennsylvania Avenue, N.W.
Washington, D.C. 20037
Phone: 202-736-9110

Fax: 202-736-9111
Email: ASKPRI@state.gov

Regular Mail

Director
Office of Policy Review and Inter-Agency Liaison (CA/OCS/PRI)
Overseas Citizens Services
Bureau of Consular Affairs
U.S. Department of State
SA-29, 4th Floor
Washington, D.C. 20520